

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

v.

GREGORY COLBURN et al.,

Defendants.

Case No. 1:19-cr-10080-NMG

**RESPONSE TO GOVERNMENT’S SUPPLEMENTAL
NOTICE REGARDING 18 U.S.C. § 666 AND “OFFICIAL ACTS”**

Pursuant to Fed. R. Crim. P. 30, and in response to the Government’s Supplemental Notice Regarding 18 U.S.C. § 666 and “Official Acts,” ECF No. 2357 (the “Notice”), Defendants Gamal Abdelaziz and John Wilson (“Defendants”) hereby reaffirm their position that § 666 requires proof of an official act. The First Circuit spoke directly on this issue in *United States v. Martinez*, holding as follows:

To convict López on Count Eleven, which was for federal programs bribery in violation of 18 U.S.C. § 666, the government was required to prove, among other things, that López accepted a thing of value while ‘intending to be influenced’ by it **to perform an official act**.

United States v. Martinez, 994 F.3d 1, 6-7 (1st Cir. 2021) (emphasis added). This holding binds the Court. And, even assuming that this statement is dicta, it is “so direct and on point that a proper respect for the opinions of the First Circuit requires this Court to follow it.” *Awuah v. Coverall N. Am., Inc.*, 985 F. Supp. 2d 185, 190 (D. Mass. 2013).

In addition, in the Notice, the government states that *Martinez* “pre-dated the Solicitor General’s brief and the Supreme Court’s denial of certiorari in *Ng Lap Seng*.” Notice at 3. This is simply not correct. The Solicitor General filed this brief in June 2020, and the Supreme Court denied cert that same month. See *Ng Lap Seng v. United States*, 141 S. Ct. 161 (2020); *Ng Lap*

Seng v. United States, Brief of the United States, 2020 WL 3027671 (June 2020). The First Circuit decided *Martinez* on April 7, 2021, almost a year later.¹

In any event, even before the First Circuit decided *Martinez*, this Court had already recognized that § 666 requires proof of an official act. *See, e.g., United States v. Sidoo*, 468 F. Supp. 3d 428, 444 (D. Mass. 2020) (discussing federal programs bribery and conspiracy to commit federal programs bribery charges, and stating that “[f]or a payment to constitute a bribe, there must be a quid pro quo — a specific intent to give or receive something of value in exchange for an official act” (internal quotation marks omitted)); *accord United States v. Ernst*, 502 F. Supp. 3d 637, 665 (D. Mass. 2020). The Court should not change its position, particularly where the First Circuit has expressly recognized that § 666 requires proof of an official act.

Respectfully submitted,

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DATED: October 6, 2021

¹ In any case, it is not clear to Defendants why the Court should follow a brief from the Solicitor General over the First Circuit.

CERTIFICATE OF SERVICE

I, Michael Kendall, hereby certify that on October 6, 2021 this document, filed through the CM/ECF system, will be sent electronically to all registered participants in this matter as identified on the Notice of Electronic Filing (NEF).

/s/ Michael Kendall